

## N.C. Court of Appeals Upholds Courtroom Access in Digital Media and Data Privacy Law Blog

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Posted in Access to Courtrooms

The North Carolina Court of Appeals earlier this week made an important statement in favor of courtroom access, affirming a lower court ruling that had declined to close proceedings in a family law dispute. The decision, in the case of *France v. France*, was significant in that the parties had sought to close proceedings on the basis of a confidentiality provision in a separation agreement.

The parties to the case entered into a separation agreement in 2007, which contained various confidentiality provisions. One obligated the parties to "use their best efforts so that any reference to the terms of th[e] Agreement and the Agreement itself will be filed under seal" if any litigation ensued between them. A year later, Brian France sued his former wife Megan France, contending she had violated certain terms of the agreement. In bringing the action, Mr. France obtained a court order permitting him to file the complaint under seal and requiring future pleadings likewise to be placed under seal.

Mr. France later moved for a preliminary injunction in September 2009, and the parties jointly requested that the court close the hearing on the motion. The trial judge denied the motion to close, as well as Mr. France's motion for preliminary injunction. Mr. France appealed the denial of the closure motion. Thereafter, a local newspaper and television station moved under North Carolina's access statute, N.C. Gen. Stat. 1-72.1, to have the pleadings on file unsealed, a motion the trial court granted. Mr. France then appealed the unsealing order as well.

The North Carolina Court of Appeals made short work of Mr. France's second appeal, holding that the trial court lacked jurisdiction to enter the unsealing order because Mr. France's first appeal divested the court of jurisdiction under the doctrine of "functus officio." This rigid application of the doctrine is troubling because the unsealing order did not relate to the subject matter of the first appeal, as it involved the status of the pleadings on file and future hearings, but not the closure of the preliminary injunction hearing. The first appeal, of course, was from an interlocutory order and did not involve the ultimate merits of the case. It is unclear how the court's application of the doctrine in this fashion advances judicial efficiency since it suggests that any proper interlocutory appeal -- such as one on a narrow privilege issue -- forces the entire case to come to a screeching halt while the appeal proceeds.

N.C. Court of Appeals Upholds Courtroom Access in Family Law Dispute

Nonetheless, the court's ruling on Mr. France's first appeal represents a clear victory for courtroom access. In upholding the trial court's closure order, the court rejected Mr. France's argument that a confidentiality clause in a private contract automatically overrides a citizen's right to access civil court proceedings. As the court observed, Article I, Section 18 of North Carolina's Constitution specifically provides that the courts shall be open. Accordingly, Mr. France bore the burden of overcoming this presumption of openness by demonstrating how the public's right to open proceedings was outweighed by a countervailing private interest.

The contract provision alone was not enough to meet this requirement -- Mr. France was required to "show some independent countervailing public policy concern sufficient to outweigh the qualified right of access to civil court proceedings." Nor was it sufficient to argue, as Mr. France did, that matters related to the Frances' minor child were at issue -- the court had other, narrower means at its disposal to protect the privacy interests of the minor than closing the proceeding in its entirety. Finally, the court found no basis for closing the proceeding simply because the agreement itself, which contained a confidentiality provision, would be discussed.

In short, the decision stands as an important reminder that the parties cannot simply agree to litigate their disputes in private (unless they chose private arbitration). By using the court system -- a public resource in the broadest sense -- to resolve their dispute, the parties should not be heard to complain if third parties wish to observe how their dispute is resolved.